

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SUSAN MARIE SHULTZ,

Plaintiff,

v.

KERN COUNTY, et al,

Defendants.

No. 2:22-cv-00397 KJM AC (PS)

ORDER

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”), and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

I. THE SCREENING REQUIREMENT

The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).

The Federal Rules of Civil Procedure are available online at [www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure).

Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at [www.uscourts.gov/forms/pro-se-forms](http://www.uscourts.gov/forms/pro-se-forms).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the court will (1) accept as true all of the factual allegations contained in the complaint, unless they are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

The court applies the same rules of construction in determining whether the complaint states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

To state a claim on which relief may be granted, the plaintiff must allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

## II. THE COMPLAINT

7 Plaintiff sues the Kern County Sheriff's Department, "Kern County Counsel," and Kern  
8 Community Development for violations of Cal. Gov. Code 7260.5(c)(4) and of Title VIII and VI  
9 of "Civil Rights to Fair Housing." ECF No. 1 at 3-4. She alleges the sheriff's department  
10 vacated her from her rental apartment without notice on 04/14/2020 and that she was not placed  
11 in alternate housing. *Id.* at 5. Plaintiff alleges she was told that the house had high mercury  
12 levels and she had to leave immediately, or she would be arrested, though her landlord and his  
13 two brothers-in-law were also there. Plaintiff alleges she was left to face her landlord alone. *Id.*  
14 Plaintiff alleges she was displaced and charged with trespassing in June 2020 for trying to access  
15 shelter in the summer. *Id.* at 6. She is now unhoused. *Id.*

### III. FAILURE TO STATE A CLAIM

17        The complaint as drafted does not state a claim upon which relief can be granted. There  
18 are not enough facts to support a federal claim under the Fair Housing Act, leaving no viable  
19 federal claim.<sup>1</sup>

The Fair Housing Act makes it unlawful to deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(1). “FHA claims ... may be brought under theories of both disparate treatment and disparate impact.” Comm. Concerning Cnty. Improvement v. City of Modesto, 583 F.3d 690, 711 (9th Cir. 2009). Courts must “analyze FHA ... disparate treatment claims under Title VII’s three-stage McDonnell Douglas/Burdine test.” Gamble v. City of Escondido, 104 F.3d 300, 305 (9th Cir. 1997). Accordingly, to establish a prima facie case of discrimination under the FHA,

<sup>27</sup> 1 Without a claim based in federal law, this federal court cannot exercise jurisdiction over any  
28 state law claims.

1 plaintiff must first show that: (1) she is a member of a protected class; (2) she was denied a rental  
2 relationship or otherwise treated differently in the terms, conditions, or privileges of her rental  
3 relationship, or in the provision of services or facilities to her as a tenant; and (3) the different  
4 treatment was, at least in part, because of her protected class status. See 42 U.S.C. § 3604(b).  
5 Plaintiff's FHA claim does not state a claim for relief because she does not allege that she is a  
6 member of a protected class or that she was treated unfairly because of her protected class status.

7 **IV. AMENDING THE COMPLAINT**

8 If plaintiff chooses to amend the complaint, the amended complaint must allege facts  
9 establishing the existence of federal jurisdiction. In addition, it must contain a short and plain  
10 statement of plaintiff's claims. The allegations of the complaint must be set forth in sequentially  
11 numbered paragraphs, with each paragraph number being one greater than the one before, each  
12 paragraph having its own number, and no paragraph number being repeated anywhere in the  
13 complaint. Each paragraph should be limited "to a single set of circumstances" where  
14 possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their  
15 complaint in the proper way. They are available at the Clerk's Office, 501 I Street, 4th Floor  
16 (Rm. 4-200), Sacramento, CA 95814, or online at [www.uscourts.gov/forms/pro-se-forms](http://www.uscourts.gov/forms/pro-se-forms).

17 Plaintiff must avoid excessive repetition of the same allegations. Plaintiff must avoid  
18 narrative and storytelling. That is, the complaint should not include every detail of what  
19 happened, nor recount the details of conversations (unless necessary to establish the claim), nor  
20 give a running account of plaintiff's hopes and thoughts. Rather, the amended complaint should  
21 contain only those facts needed to show how the defendant legally wronged the plaintiff.

22 The amended complaint must not force the court and the defendants to guess at what is  
23 being alleged against whom. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)  
24 (affirming dismissal of a complaint where the district court was "literally guessing as to what  
25 facts support the legal claims being asserted against certain defendants"). The amended  
26 complaint must not require the court to spend its time "preparing the 'short and plain statement'  
27 which Rule 8 obligated plaintiffs to submit." Id. at 1180. The amended complaint must not  
28 ////

1 require the court and defendants to prepare lengthy outlines “to determine who is being sued for  
2 what.” Id. at 1179.

3 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff’s  
4 amended complaint complete. An amended complaint must be complete in itself without  
5 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended  
6 complaint supersedes the original complaint. See Pacific Bell Tel. Co. v. Linkline  
7 Communications, Inc., 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint  
8 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, Federal Practice &  
9 Procedure § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an  
10 original complaint, each claim and the involvement of each defendant must be sufficiently  
11 alleged.

## 12 V. PRO SE PLAINTIFF’S SUMMARY

13 It is not clear that this case can proceed in federal court. Your only federal claim is  
14 brought under the Fair Housing Act. To make a Fair Housing Act claim, you need to show that  
15 you were discriminated against because of your race, color, religion, sex, familial status, or  
16 national origin. You need to give enough facts to support your claim. Your lawsuit cannot  
17 proceed unless you fix the problems with your complaint.

18 Violations of state housing laws cannot form the basis of a federal lawsuit. You may add  
19 them to a federal complaint that presents an FHA claim, but if you do not have an FHA claim  
20 based on discrimination then you should file any state law claims in state court.

21 You are being given 30 days to submit an amended complaint that provides a proper basis  
22 for federal jurisdiction. If you submit an amended complaint, it needs to explain in simple terms  
23 what laws or legal rights of yours were violated, by whom and how, and how those violations  
24 impacted each plaintiff. Without this information, the court cannot tell what legal claims you are  
25 trying to bring against the defendants. If you do not submit an amended complaint by the  
26 deadline, the undersigned will recommend that the case be dismissed.

27 ////

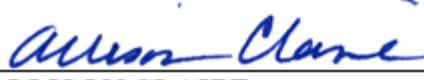
28 ////

1 IV. CONCLUSION

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 4 2. Plaintiff shall have 30 days from the date of this order to file an amended complaint that
- 5 names defendants who are amenable to suit, and which complies with the instructions
- 6 given above. If plaintiff fails to timely comply with this order, the undersigned may
- 7 recommend that this action be dismissed.

8 DATED: March 3, 2022

9   
10 ALLISON CLAIRE  
11 UNITED STATES MAGISTRATE JUDGE

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28